

Available online at [www.sciencedirect.com](http://www.sciencedirect.com)**ScienceDirect**

Procedia - Social and Behavioral Sciences 101 (2013) 248 – 255

**Procedia**  
Social and Behavioral Sciences

AicQoL 2013 Langkawi  
AMER International Conference on Quality of Life  
Holiday Villa Beach Resort & Spa, Langkawi, Malaysia, 6-8 April 2013  
*"Quality of Life in the Built and Natural Environment"*

## Public Participation in Heritage Sites Conservation in Malaysia: Issues and challenges

Azni Mohd Dian\*, Nuraisyah Chua Abdullah

*Faculty of Law, Universiti Teknologi MARA (UiTM), 40450 Shah Alam, Selangor Darul Ehsan, Malaysia*

### Abstract

There are escalating numbers of decay and neglect in most heritage sites cases in Malaysia. Although Malaysia has introduced the heritage and planning legislation to manage heritage sites conservation, it is timely that the public participates and accords full protection of the heritage sites. The objective of the research is to analyze the laws that govern the public participation process in heritage sites conservation and to address the problems encountered in its application. This paper is a library based research uses a qualitative approach to analyze the laws that govern public participation process in the development of heritage sites. The findings show that effective public participation depends on clear and comprehensive legislation to strengthen the compliance and implementation of the heritage related laws.

© 2013 The Authors. Published by Elsevier Ltd. Open access under [CC BY-NC-ND license](#).

Selection and/or peer-review under responsibility of the Association of Malaysian Environment-Behavior Researchers, AMER (ABRA malaysia).

**Keywords:** Public participation process; heritage and planning legislation; issues and challenges

### 1. Introduction

Public participation provides a method for incorporating the public's ideas, values and interests into decisions, resulting in more responsive and democratic governance (Boyte and Kari 1996). The Burra Charter also emphasises that heritage conservation will become unsustainable without local community participation (ICOMOS, 1999, Article 12). Effective participation relates to empowerment, communication and responsibility. Empowerment is not only about the public's right to be engaged to discuss issues that affect their life but also having influence in the decision making. 'The objectives of

\* Corresponding author. Tel.: +6-03-5544-4122; fax: +6-03-5521-1094.  
E-mail address: [azni378@salam.uitm.edu.my](mailto:azni378@salam.uitm.edu.my).

public participation among others are to provide the public with information so that they understand the heritage conservation issues, values and process, and ultimately participate effectively. Further the participation process will provide opportunities to the public to share their views and influence the outcome of the planning and conservation process. Whilst public participation is accepted as an essential requirement for planning development, there is limited literature which considers the legal issues and challenges in implementing public participation in heritage sites conservation legal framework. In Malaysia, heritage conservation matters are governed by the National Heritage Act 2005 (hereinafter referred to as the NHA), Town and Country Planning 1976 (hereinafter referred to as the TCPA), Environmental Impact Assessment Act 1974 (EIA), Street Drainage and Building Act 1976 and Uniform Building By-laws 1984. This research will focus on the legal issues and challenges in the implementation of the legal requirements of the public participation conservation of heritage sites as enshrined in the NHA and TCPA.

## 2. Meaning of ‘public’ and ‘public participation’ in conservation of heritage sites

The Cartagena Protocol made many general references to ‘the public’, but without providing a clear definition of the term. That usage provided States with a degree of freedom, as ‘the public’ could potentially be defined differently with respect to different requirements. It was generally accepted that ‘the public’ could be interpreted as all people who can also be divided into specific interest groups and stakeholders, according to the issue being addressed related to its context. (National Biosafety Workshops, 2003). Public participation is defined by World Bank as ‘a process by which people, especially disadvantaged people, can exercise influence over policy formulation, design alternatives, investment choices, management, and monitoring of development interventions in the communities’ (The World Bank, 1992: p. 2) Davidoff (1965) defines ‘public’ as the local people, either individuals who or organizations that have an interest in or will likely be affected, either positively or negatively, by a decision to be made on any particular issues by the local authorities. While it is generally accepted that the expanding role of public participation has become a major facet of many types of policy, decision making and planning activities, Davidoff further argued that it was impossible for the planner to have an overview of the entire needs of the community. The culture of community collaboration, consensus building, debate and discussion are ways to get better insight into the needs of the community (Raford, 2011). In the conservation of heritage sites, preservation planning includes public participation where it provides a platform for open discussion of preservation issues. As heritage sites belong to the people, only people who live either in, within or near the sites know best on how effective implementation of preservation plans are best carried out. It should be meaningful if in the course of assisting local authorities, the public participation is applied as early as at the designation stage rather than when it is offered to review the decisions already made.

The TCPA and the NHA do not define “public participation” unlike the Skeffington Committee in UK who defined public participation as:

*“... the act of sharing in the formulation of policies and proposals. Clearly, the giving of information by the local planning authority and of an opportunity to comment on that information a major part in the process of participation, but it is not the whole story. Participation involves doing as well as talking and there will be full participation only where the public are able to take an active part throughout the plan-making process.” (Healy, P., 1998)*

### 3. Significance of public participation

The International Association for Public Participation, an international leader in public participation, has introduced the “IAP2 Core Values for Public Participation” for use in the development and implementation of public participation processes. The purpose of these core values is to help make better decisions which reflect the interests of the people and their entities. Among the fundamental *Core Values for the Practice of Public Participation* are public participation is based on the belief that those who are affected by a decision have a right to be involved in the decision-making process and it includes the promise that the public’s contribution will influence the decision. Public participation provides participants with the information they need to participate in a meaningful way.

Public participation plays an integral part of the decision-making process. It is an ongoing event that requires two ways flow of information, communication and cooperation between the local community and the local authorities. Thus, the significance of public participation can be viewed from both the local authorities and public perspectives. From the local authorities’ perspective, public participation will promote democracy and transparency in its administration that allows the people to share their knowledge, experience and to voice out their dissatisfaction. From the knowledge sharing session, the local authorities will get the real picture of how the public deals with certain issues that affect their daily life. As a consequence, matters pertaining to the policies and related measures can be better formulated and be addressed effectively by the local authorities. On the part of the public, participation process will guide and provide them better understanding of the local authorities’ policy directions, and its implementation. The public will also regard that good governance process is uphold. This is supported by Perkins (2003) that demonstrates the goal of public representation is significant as it is directly related to public perception of fairness which leads to decision made being legitimate. Public participation process requires a transfer of information by the local authorities as the information holder to the people. This will promote mutual education and sharing of knowledge between them (Irvin & Stansbury, 2004). Consequently, the public and decision makers will have a chance to understand the problem at hand, able to form alternatives and possible solutions. At the same time, the public will feel that they are part to the decision making process and thus enhance their sense of responsibility. With reference to the importance of public participation in heritage conservation, ICOMOS perceived the conservation of historic towns and urban areas concerns their residents first of all” (International Council on Monuments and Sites (ICOMOS) 1987, Article 3). The Washington Charter for the Conservation of Historic Towns and Urban Areas 1987 (Washington Charter) also clearly states that: “The participation and the involvement of the residents are essential for the success of the conservation programme and should be encouraged”. In UK, the English Heritage sets out in one of its 6 *Conservation Principles Policies and Guidance for the Sustainable Management of The Historic Environment* that “everyone should be able to participate in sustaining the historic environment”. The government of UK believes that a logical approach in making decisions and offering guidance about all aspects of England’s historic environment is to acknowledge the people as a significant role for the sustainable management of the historic environment. As the purpose of heritage conservation is to enable their heritage being transferred to future generations, the public has to actively participate and get themselves involve in heritage conservation matters.

### 4. Public participation and heritage sites conservation process

On the 8 July 2008, Melaka and George Town, have been inscribed as “historic cities of the Straits of Malacca” on UNESCO’s World Heritage List (World Heritage Convention, 1972). The Operational Guidelines for the Implementation of the World Heritage Convention was introduced with the aim to facilitate the implementation of the Convention concerning the Protection of the World Cultural and

Natural Heritage, by setting forth the procedure for among others the inscription of properties on the World Heritage List and the protection and conservation of World Heritage properties. Article 12 of the Operational Guidelines for the Implementation of the World Heritage Convention demonstrates that all states parties to the Convention including Malaysia are encouraged to promote participation of a wide variety of stakeholders, including site managers, local and regional governments, local communities, non-governmental organizations (NGOs) and other interested parties and partners in the identification, nomination and protection of World Heritage properties. This international conservation framework addresses public participation as crucial especially in the designation and implementation of preservation plans as they are often best able to identify important landmarks, nodes, boundaries and other elements that define the existing character of a place and its heritage attributes becomes clearer (Susan, 2000).

In Malaysia, both NHA and TCPA provide the relevant provisions offering the public to participate in the designation and management of heritage conservation process. Heritage sites conservation commences from the day when the sites are to be designated as heritage sites followed by the conservation management process which greatly depends on the land use planning development. This is a strong indication that public opinion and views are recognised in the heritage sites conservation. Nevertheless, there are issues and challenges in recognizing the importance of effective implementation of public participation in heritage sites conservation which are identified as follows:-

#### *4.1. Public participation in designation of heritage sites process*

In the UK, the heritage sites designation process has been criticised. The public finds it difficult to understand the basis on which designation decisions are made and the practical implications of designation are vague (Report from Department for Culture, Media and Sport Welsh Assembly Government, 2007). In response to the public call to change, the UK government has taken a holistic approach that all national designation decisions are made on the basis of outstanding architectural, historic or archaeological interest and decisions are also made easier to understand by publishing new detailed selection criteria for national and local designation. In Oxford, community participation has been identified as key to the successful preparation of the heritage assets register that contains building and sites that might not meet the national criteria for statutory designations but are still valued locally for their historic interest. The public has taken a proactive approach in assisting Oxford City Council to compile the heritage assets register of locally significant heritage assets located outside designated conservation areas to inform planning decisions in the city (Report from Oxford's Department for Communities and Local Government, Planning Policy Statement 5 (PPS5), 2010).

In Malaysia, the Commissioner of Heritage is empowered to designate any site which has natural or cultural heritage significance as a heritage site subject to other conditions stated in the NHA (section 24 of the NHA). Section 25 of the NHA further states that the Commissioner may also designate any other site which has no natural or cultural heritage significance as a heritage site because of its proximity to and for the protection and enhancement of the designated site. Upon determining to designate the site, the Commissioner is under the duty to give notice to the owner of the site or to any other person affected of the intention to register the site as a heritage site (section 26 of the NHA). As soon as after giving such notice, the Commissioner shall cause to be published in the *Gazette* and a local newspaper a notice of intention to designate the site as a heritage site (section 27(2) of the NHA). At this stage, Section 28 of the NHA provides that the owner or any affected person or likely to be affected is allowed to object, give any views or opinion on the intention to designate by serving a notice of objection on the Commissioner within 30 days from the date of publication of notice in the *Gazette* and newspaper. In response to the objection made, section 29 empowers the Commissioner to arrange for a hearing and has a duty to serve the owner of the objecting party a notice of hearing at least 21 days before the hearing is conducted. After

hearing the parties, the Commissioner will decide whether to proceed with the designation or otherwise with or without assigning any reason (section 31). Even though the public, either the owner or any person affected is allowed to object to the designation of a site to be a heritage site, the decision of the Commissioner is final as the NHA does not provide any provision for the public to appeal against the decision made. The objecting parties are left with no alternatives or possible opportunities to solve their problem except for applying for judicial review which will take a long period to be heard and cost to be incurred. The law is also silent on the method of hearing to be held and how the result of hearing is to be conveyed to the objecting parties. The fact that the Commissioner's decision is deemed to be final without having duty to assign any reasons for rejecting the objection implies that their participation in the designation of heritage site process has no influence.

After the introduction of the NHA, there was one incident where a lovely 80-year old Bok House, an old mansion in Jalan Ampang, was nominated to be preserve as a heritage site but was rejected by the Minister of Information, Communication and Culture (Minister of Culture, Arts and Heritage then). It was finally demolished. In response to pressures from the conservationists demanding for an explanation, the Minister was reported to have given the reasons that Bok House was never listed in the list of historical sites under the NHA; despite various pressures for inception in the national heritage list from the national heritage NGO. (The Star, December 15, 2006). The Minister's statements indicated that participation from the public is insignificant. From the above scenario, it seems that the public's views in assess in preserving the unique characteristics and strengths of their heritage failed to achieve the core values of public participation that it will influence decision making. Thus, even though, the NHA provides for the right of the public to nominate any heritage sites as national heritage, however, the Commissioner is not bound to adhere to the suggestions of the public.

#### *4.2. Non-obligatory duty of publication of planning application*

One of the 27 principles in public participation as outlined in the Rio Declaration on Environment and Development (Rio Declaration, 1992) is that environmental issues are best handled with the participation of all concerned citizens, each individual shall have appropriate access to information and the opportunity to participate in decision-making processes (Principle 10). However, there is absence of provisions regarding the obligation of the relevant authority to publish details of filed planning applications under the TCPA and the NHA, which may affect the planning permission process and ultimately the lifespan of heritage buildings (Nuraisyah Chua, 2008). Section 21(6) of the TCPA provides a mechanism for the public to know of the existence of a planning application in a proposed development is the general obligation of the local council to notify adjoining owners and the same approach is applicable to the adjoining owners of heritage buildings. As the duty to notify does not extend to the general public, it implies that the laws failed to give serious attention to the issue of public involvement in the planning development. In the case of heritage sites conservation, those who may be conscious of the existence and value of the heritage sites, are not able to object and participate if they are not living within the neighbouring land of the proposed development. While public participation seems to play a major role and has much to offer, it is evident that the public's voice neither heard nor given appropriate consideration. The provisions seem to be vague and unclear that, lead to ineffective public participation in the conservation of heritage sites. The TCPA 1976 also has failed to specify the manner of consultation as such it is within the discretion of the planning authority to determine the method of consultation. The planners often prefer to take the mid-way approach, wherein they can limit the publicity as required by law (Kamalruddin S, 1990).



#### 4.3. Public's right of rejection of proposed development affecting heritage sites

In Malaysia, section 21(6) of the TCPA, which provides that planning permission needs to be approved by the local planning authority; also accords an opportunity to the public to object to any proposed development from being carried out when there is no local plan approved or available in that particular area. As soon as after the receipt of an application for planning permission, the local planning authority shall take into consideration various factors one of which is the objections made by the public (section 22(2)(c) of TCPA). It is worth pointing out that in certain circumstances, the proposed development to be carried out may affect heritage buildings, sites or is within the heritage area. In this scenario, when there is no local plan available, upon receipt of an application for planning permission, the local planning authority shall serve a written notice on the owners of the neighbouring lands informing them of their right to object to the application and to state their grounds of objection within twenty-one days of the date of service of the notice (section 21(7) of TCPA). To this effect, 'neighbouring lands' refers to, inter alia either lands adjoining the land to which an application under this section relates, or lands located within a distance of 200 metres from the boundary of the land to which an application relates (section 21(8)). However, there is no extension of time available in the provision if the public fails to object within the said period. Upon receipt of the objection, the planning authority shall, within thirty days after the expiry of the objection period, conduct a hearing before the planning permission is granted (Section 21 (6) of TCPA). In *Datin Azizah bte Abdul Ghani v Dewan Bandaraya Kuala Lumpur & Ors* (1997) 2MLJU 204 HC, the plaintiff claimed that she was not given the opportunity to object as she did not receive any notice calling for objections from the defendant. On appeal, the Supreme Court recognised the importance of the public to participate in the planning permission process and ordered to quash the disputed development order. The right of public participation in the planning permission process is also supported by the Court of Appeal in the case of *Mentari Housing Development Sdn Bhd & Anor v Abdul Ghapor Hussin & Or* (2011) MLJU 1009, where it decided that the purported planning permission approved by the planning authority was null and void as no statutory hearing was ever held by the planning authority prior to the so-called planning permission. The Court of Appeal decided that section 21(6) and (7) of the TCPA confer on the residents a statutory right to be heard, while section 22(1) and (2) require the planning authority to consider the residents' objections before planning permission can be granted. It is also noted from the facts of the above case that the commencement of work took off prior to planning permission been obtained.

Unfortunately, not all judges share the spirit of acknowledging the importance of public participation in the planning permission process. This was illustrated in the case of *Abdul Razak bin Ahmad v Majlis Bandaraya Johor Bahru* (1995) 2 AMR 1174; (1995) 2 MLJ 287; where the court decided that the plaintiff has no *locus standi* to object to the proposed development project as he does not reside on the land adjoining to the project. The judge further states that to give *locus standi* to a taxpayer such as the plaintiff, would open the floodgate and stifle development in the country. It is viewed that if the same approach is applied in any case affecting heritage sites, the decision of the court fails to take into account the objective of having public involvement in the conservation of heritage sites.

Councillors appointed by the government, are viewed as representing the public and should take active role in the conservation of heritage sites hand in hand with the local councils. According to the Local Government Act 1976, the appointment of councillors is done: "From amongst persons the majority of whom shall be persons ordinarily resident in the local authority area who, in the opinion of the State Authority, have wide experience in local government affairs or who have achieved distinction in any profession, commerce or industry, or are otherwise capable of representing the interests of their communities in the local authority area" (section 10(2)). Section 10(1)(b) of the Act stipulates that number of councillors in a particular council may range from not less eight to not more than twenty-four.

Even though the state government controls them, the councillors may be viewed as representatives of the area from where they hail or representing various business communities or interest groups, including the NGO heritage groups. The councillors provide a channel of communication between the local government and the local residents in relation to the development in heritage sites. They could assist as mediator in times of disputes over development matters in heritage sites amongst the local councils, business entities and the public.

## 5. Conclusion

The success of public participation in the conservation of heritage sites depends on the power to influence decision-making. There are various factors that need to be addressed to ensure the public to play their role in the decision making process affecting heritage conservation. The objectives of public participation provide opportunities to the public to share their views and influence the outcome of the planning and conservation process seems weak and lacking in both. The issues on the wide discretionary power of the Commissioner in the designation of heritage site and, limited right to object given to selected people in planning development matters may affect the public's willingness to participate in the conservation of heritage sites. The people do not feel that they can influence the outcome and thus, may not really wish to be involved in planning exercises and are happy to defer to experts. As effective public participation also depends on clear and comprehensive legislation to strengthen the compliance and enforcement of the heritage related laws, it is recommended that the laws pertaining to public participation process in the development of heritage sites to be re-visited.

## References

- Abdul Razak Ahmad v Majlis Bandaraya Johor Bahru (1995) 2 AMR 1174; (1995) 2 MLJ 287; Ketua Pengarah Jabatan Alam Sekitar & Anor v Kajing Tubek & Ors and Others Appeals (1997) 3 AMR 2521 at 2553; (1997) 3 MLJ 23 at 47.
- Boyte, Harry and Nancy Kari. 1996. Rebuilding America: The Democratic Promise of Public.
- Davidoff, P. (1965) Advocacy and Pluralism in Planning. *Journal of the American Institute of Planners*, 3, 331-338.
- Healey, P. (1998) Collaborative planning in a stakeholder society. *Journal of Town Planning Review*, 69 (1).
- IAP2 Core Values for Public Participation. Accessed at <http://www.co-intelligence.org/CII-1.html> on 14 Jan 2013.
- Irvin, R. A., & Stansbury, J. (2004). Citizen participation in decision making: Is it worth the effort? *Public Administration Review*, 64(1), 55-65.
- Kamalruddin Shamsudin, "Towards Effective Public Participation at the Report of Survey Exhibition Stage" (Unpublished, Federal Department of Town and Country Planning, Malaysia, 1990).
- Nuraisyah Chua Abdullah, (2008) "Preservation of Historical Buildings: An Analysis of Malaysian Laws", *Law Review* 2008, 628-637.
- Perkins, P. E. (2005). *Public participation and ecological valuation: Inclusive=Radical*. Paper presented at the Capitalism Nature Socialism conference.
- Susan L. Henry Renaud, "Preservation Planning: Ensuring a Future for Our Past" *CRM* magazine, U.S. Department of the Interior, National Park Service, 23 (7), 2000.
- The Convention 1972, concerning the Protection of the World Cultural and Natural Heritage ("UNESCO World Heritage Convention") is an international agreement that was adopted by the General Conference of UNESCO in 1972.
- The *Operational Guidelines for the Implementation of the World Heritage Convention* are a series of instructions to signatory nations regarding the proper implementation of the 1972 *Convention Concerning the Protection of the World Cultural and Natural Heritage*. The guidelines were adopted by the UNESCO World Heritage Committee at its first session and amended at its second session in 1978.
- The Star ( December 15, 2006) – p 5 "Bok House on Jln Ampang demolished", retrieved from <http://thestar.com.my/news/story.asp?file=/2006/12/15/nation/20061215210439&sec=nation> on 27 July 2011.
- UNEP-GEF Project on Development of National Biosafety Workshops Asian Countries Subregional Workshop (January 21 -24, 2003, Kuala Lumpur, Malaysia).

- Wan Hashimah Wan Ismail (2010). Sustainability of buildings in historic city of Malacca, *Asian Journal Of Environment-Behaviour Studies*, 1 (3).
- Zillman, D.N., Lucas, A., Pring, A. (ed.)(2002). *Human Rights in Natural Resources*. Oxford University Press.